

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**NICHOLAS V. SIRAVO and
FELICIA A. SIRAVO,
Plaintiffs
v.**

**CROWN, CORK, AND SEAL
COMPANY, ET AL.,
Defendants.**

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CIVIL ACTION

No. 06-4308

MEMORANDUM AND ORDER

GENE E.K. PRATTER, J.

APRIL 6, 2007

Pro se Plaintiffs Nicholas and Felicia Siravo have filed a complaint against Crown, Cork & Seal Company, Inc. (“Crown”), Sun Chemical Corporation, E.I. du Pont de Nemours & Company and Ciba Specialty Chemicals Corporation, for fraudulent concealment and neglect relating to their alleged exposure to “toxic and carcinogenic” inks, dyes, pigments, coatings, solvents and chemicals. (Compl. ¶ 1.)

Plaintiffs previously sought redress of their alleged injuries against the same Defendants in a suit filed in the Court of Common Pleas of Philadelphia County. Siravo v. Crown, Cork & Seal Company, et al., Court of Common Pleas, Philadelphia County, Pennsylvania, July Term 2004 No. 2283, *aff’d*, Siravo v. Crown, Cork & Seal Company, et al., No. 768 EDA 2005 (Pa. Super. Nov. 10, 2005). After providing Plaintiffs two chances to amend their complaint, Judge Arnold L. New of the Court of Common Pleas dismissed the Siravos’ complaint because it failed to meet the legal and factual requirements for an adequate pleading under the Pennsylvania Rules of Civil Procedure. Id. at 4-5.

Defendants argue that the present action must also be dismissed on one of the following grounds: (1) the claims are precluded by the doctrine of *res judicata* because the same claims were made against the same Defendants, in Pennsylvania state court; (2) the Court lacks subject

matter jurisdiction over Plaintiffs' claims, and thus they should be dismissed pursuant to Federal Rule 12(b)(1); (3) Plaintiffs' claims are time-barred; or (4) the complaint fails to state a claim for which relief can be granted under Federal Rule 12(b)(6).

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenges "the existence of subject matter jurisdiction in fact." Mortensen v. First Federal Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977). Contrary to a motion to dismiss pursuant to Rule 12(b)(6), the Court does not presume the truthfulness of the plaintiffs allegations, and the plaintiff bears the burden of persuading the Court of the existence of jurisdiction. Murphy v. National City Bank of Cleveland, 2006 WL 1805693, at *1 (W.D. Pa. Jun. 28, 2006).

Though the Court is mindful of the relaxed standards for construction of *pro se* pleadings, the Siravos have not met their burden to prove jurisdiction. Plaintiffs' Response to the Motion to Dismiss fails to specifically address any of Defendants' arguments; rather, the Siravos opted to recite to the Court their own definition of a "tort," "product liability," "*res ipsa loquitur*," and a brief description of the Occupational Safety and Health Act of 1970. They additionally included as exhibits an abundance of newspaper articles on toxic torts, health pamphlets regarding kidney cancer, information on the chemical "Benzidine," and a settlement agreement apparently signed between Marie Siravo, Mr. Siravo's mother, and Crown.

Whether or not these pleadings are legally or factually adequate by federal standards, and whether or not they are barred by *res judicata*, or otherwise, the Court lacks subject matter jurisdiction over this matter and thus will not proceed to address the substance of Plaintiffs' claims. The Siravos have not asserted a basis for federal question jurisdiction pursuant to 28 U.S.C. § 1331. The Complaint makes mention only of "fraudulent concealment" and "neglect,"

both causes of action arising in tort. Although Plaintiffs refer to the Occupational Safety and Health Act in their Response to the Motion to Dismiss, several courts of appeals, including our own court, have held that OSHA does not create a private cause of action against an employer for a violation of the Act. Ries v. National R.R. Passenger Corp., 960 F.2d 1156, 1164 (3d Cir. 1992).

Neither have the Siravos proven that the Court has diversity jurisdiction to consider this matter. Plaintiffs are residents and citizens of the Commonwealth of Pennsylvania. (Compl.) Pursuant to 28 U.S.C. § 1332(c)(1), for purposes of diversity jurisdiction, a corporation is a citizen of both the state of its incorporation and the state in which it has its principal place of business. Murphy, 2006 WL 1805693, at *3. Crown has chosen Pennsylvania for both. (Affidavit of Michael J. Rowley, Mot. to Dismiss, Exhibit I.) Diversity jurisdiction does not exist unless each defendant is a citizen of a different state from each plaintiff. See, e.g., Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 373, 98 S. Ct. 2396, 2402 (1978) (28 U.S.C. § 1332(a) has “consistently been held to require complete diversity of citizenship”). Consequently, the Court will dismiss this case with prejudice based on a lack of jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. An appropriate Order follows.

BY THE COURT:

GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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ORDER

AND NOW, this 6th day of April 2007, upon consideration of Defendants' Joint Motion to Dismiss (Docket Nos. 4, 9), and Plaintiffs' Response thereto (Docket No. 11), **IT IS HEREBY ORDERED** that this case is dismissed with prejudice pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The Clerk of the Court shall mark this case **CLOSED** for statistical and all other purposes.

BY THE COURT:

/s/ Gene E. K. Pratter

GENE E.K. PRATTER

UNITED STATES DISTRICT JUDGE